

CAROL SCHUENEMANN, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
TOWNSHIP OF DELRAN, :
BURLINGTON COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner, a teacher employed by the Board, contends that the Board violated *N.J.S.A.* 18A:30-2.1 when it deducted accumulated sick days to cover the hours she was absent from work between March and May 2005, after she returned to teaching on a part-time basis following a work-related injury in October 2004.

The ALJ found that the language of the governing statute is specific. It conditions an employee's receipt of one year of service related sick leave – without liquidation of the employee's accumulated contractual sick leave – upon the employee's receipt of temporary workers' compensation benefits. The ALJ further found that the workers' compensation benefits do not extend to a return to work on a part time basis. Thus, in the ALJ's judgment, petitioner did not meet the standard set in *N.J.S.A.* 18A:30-2.1 and respondent consequently was permitted to draw down petitioner's contractual sick leave benefits for her un-worked hours upon her return to work on a part-time basis.

The Commissioner found, *inter alia*, that: under the principles set forth in previous decisions on this issue, petitioner was eligible for benefits under *N.J.S.A.* 18A:30-2.1 through mid-May 2005, even though her workers' compensation benefits had stopped upon her return to part-time service in March 2005. The Commissioner further found that petitioner should not be penalized for her voluntary return to part-time employment when she could have declined to return to work until she was fully healed. Accordingly, the Initial Decision of the OAL is rejected, and respondent is directed to restore 29.5 days of sick leave to petitioner's account.

<p>This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.</p>

May 9, 2007

OAL DKT.NO. EDU 4522-05
AGENCY DKT. NO. 115-5/05

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The record of this matter, the Initial Decision of the Office of Administrative Law (OAL) and petitioner’s exceptions have been reviewed.

Petitioner appealed respondent’s deduction of 29.5 of her accumulated sick days for the un-worked portions of school days between March 15, 2005 – when she returned to work on a part-time basis after an absence due to a work-related injury – and mid-May 2005, when she returned to full-time status. Because there were no material issues of fact, the parties consented to disposition upon summary decision.

By way of background, the parties agree that petitioner suffered a knee injury arising out of her employment duties on October 18, 2004, and was awarded temporary disability by the workers’ compensation court. On March 15, 2005, she asked the workers’ compensation - authorized physician whether she could return to work, and was cleared to do so – on a half-time basis only. It is undisputed that petitioner’s knee was not sufficiently healed at that time to allow a return to full-time work. Her return to full-time employment occurred in mid-May.

When petitioner returned to part-time duties, of her workers' compensation payments ceased. For the period from March 15 through mid-May, petitioner received her full salary amount, but respondent compensated petitioner for the un-worked hours by drawing down her accumulated sick days.

In support of her position that she should have received full pay for the period in question, without forfeiture of accumulated sick days, petitioner relied upon *N.J.S.A. 18A:30-2.1*. That statute provides, in pertinent part:

Sick leave payment for service connected disability; satisfactory service

- a. Whenever any employee, entitled to sick leave under this chapter, is absent from his post of duty as a result of a personal injury caused by an accident arising out of and in the course of his employment, his employer shall pay to such employee the full salary or wages for the period of such absence for up to one calendar year without having such absence charged to the annual sick leave or the accumulated sick leave provided in N.J.S.18A:30-2 and 18A:30-3. Salary or wage payments provided in this section shall be made for absence during the waiting period and during the period the employee received *or was eligible to receive* a temporary disability benefit under chapter 15 of Title 34, Labor and Workmen's Compensation, of the Revised Statutes. Any amount of salary or wages paid or payable to the employee pursuant to this section shall be reduced by the amount of any workmen's compensation award made for temporary disability.

(Emphasis added.)

Respondent, on the other hand, argued that the (underlined) second sentence of *N.J.S.A. 18A:30-2.1(a)* moderated its obligation to pay petitioner full salary without liquidation of sick leave, by restricting the period of time during which petitioner could receive such full benefits to the period of time that petitioner received workers' compensation temporary disability benefits. It maintained that since petitioner had stopped receiving such benefits on

March 15, 2005, when she commenced a part-time teaching schedule, she was no longer eligible to receive the full salary – without liquidation of sick leave – mandated by *N.J.S.A. 18A:30-2.1(a)*.

The Administrative Law Judge (ALJ) reluctantly agreed with respondent. The Commissioner notes, however, that the issue has been previously considered and decided to the contrary.

In *John Theodore v. Board of Education of the Town of Dover, Morris County*, decided by the Commissioner March 15, 1983, the question of entitlement to benefits under *N.J.S.A. 18A:30-2.1* after workers' compensation payments have ceased was addressed. Custodian John Theodore's workers' compensation benefits had stopped on August 21, 1980, but he nonetheless petitioned to receive his full year of salary, without sick leave liquidation, under *N.J.S.A. 18A:30-2.1*. It was necessary for the Commissioner to determine whether Theodore was still "eligible" to receive workers' compensation disability benefits even though he was no longer actually receiving them. A finding of "eligibility" would, under the second sentence of *N.J.S.A. 18A:30-2.1(a)*, require the respondent board of education to pay Theodore the prorated amount of his annual salary from August 21, 1980 to February 15, 1981, without liquidation of sick leave.

At the outset, the Commissioner agreed with the ALJ that statutes in support of workers who have been accidentally injured on the job should be liberally construed to the fullest extent allowable. He further agreed that to accept the view that petitioner's salary would be payable pursuant to *N.J.S.A. 18A:30-2.1* only while workers' compensation benefits were being received, because cessation of benefits equals ineligibility, absent such an express limitation in the law, would lead to an absurd result, which is not favored in the law. *State v. Provenzano*,

34 *N.J. Super.* 435 (App. Div. 1961); *LaPolla v. Bd. of Chosen Freeholders of Union City*, 71 *N.J. Super.* 264 (Law Div. 1961).

Seeking a more reasonable determinant of whether Theodore was still eligible to receive workers' compensation benefits, even though they had actually been terminated, the ALJ reviewed *N.J.S.A.* 34:15-38, which explains how to calculate the amount of disability payable to claimants. It states, in pertinent part:

To calculate the number of weeks and fraction thereof that compensation is payable for temporary disability, determine the number of calendar days of disability from and including as a full day the day that the employee is first unable to continue at work by reason of the accident, including also Saturdays, Sundays and holidays up to the first working day that the employee is able to resume work and continue permanently thereat. . . .

Theodore's affidavit, attached to his brief, had indicated that in the 12-month period following the February 1980 accident, he had been employed temporarily for a one-month period as a security guard, earning \$ 1,126.64, but was not able to continue at work for the Dover Board of Education because of the disability received from the on-the-job accident. In other words, he had been unable to continue to work or be employed permanently during the year following his accident.

Accordingly, the ALJ found that Theodore was "eligible" to receive temporary disability benefits for the 12 months after his injury (from February 15, 1980 to February 15, 1981) because that injury prevented him from continuing his work for the Board during that period. Having been found eligible, he was entitled under *N.J.S.A.* 18A:30-2.1 to his full salary , without sick leave liquidation, for the twelve months after his injury - minus his workers' compensation payments, minus salary received from the Board and minus the salary he

received for the one-month temporary job as a security guard. The Commissioner adopted the ALJ's analysis and conclusions as the final decision in the case.

Eight years later the issue was once again put before the Commissioner - in *Jaques Verneret v. Board of Education of the City of Elizabeth*, 92 N.J.A.R. 2d (EDU) 191; *aff'd* as modified, State Board, 95 N.J.A.R. 2d. 134, 135. Subsequent to a workplace injury, Verneret – a bus driver/utility person – had been granted only a nine-week period of temporary disability by the Workers' Compensation court. It was undisputed in the proceedings before the Commissioner of Education, however, that Verneret's disability had prevented him from returning to work after the nine weeks. He consequently argued that even though he had stopped actually receiving workers' compensation benefits and had not appealed their cessation, he had nonetheless been "eligible" to receive them. Thus, he reasoned, he was entitled to the year of full salary available under *N.J.S.A. 18A:30-2.1*.

Based on the precedent established in *Theodore*, the Commissioner agreed that, notwithstanding the cessation of workers' compensation disability benefits, Verneret was entitled – under *N.J.S.A. 18A:30-2.1* – to his salary for one full year from the date of his injury, since he was undisputedly unable to return to work for the respondent board after the date of the injury.¹ As in the case of *Theodore, supra*, petitioner's entitlement to full salary was mitigated by workers' compensation benefits, salary already paid by respondent, and any salary he may have received from temporary work during his period of eligibility for the sick leave benefits.

In the present case, it is undisputed that petitioner's knee injury prevented her from fully resuming her teaching responsibilities until mid-May 2005. It appears from the record that it was a workers' compensation-authorized doctor who made this determination. Under the

¹ The respondent board ultimately terminated Verneret (effective September 1, 1990) based upon his inability to perform the duties of his job, despite having reached maximum medical recovery.

principles set forth in *Theodore* and *Verneret*, petitioner was thus “eligible” for disability benefits through mid-May 2005, even though those benefits stopped upon her return to part-time service on or about March 15, 2005. Accordingly, during the period between March 15, 2005 and mid-May 2005, petitioner was entitled to the salary benefits available under *N.J.S.A.* 18A:30-2.1(a), without sick leave liquidation.

Finally, the Commissioner agrees with petitioner that she should not be penalized for her voluntary return to part-time employment, particularly when she could have continued to receive full salary – without sick leave liquidation – had she declined to return to work until she was fully healed. Such a penalty could indeed serve as a disincentive to dedicated employees who might consider returning to work prior to being released for full time duty.

Accordingly, for the reasons expressed herein, the Initial Decision of the OAL is rejected. Petitioner's appeal is granted, and the Delran Township Board of Education is directed to restore 29.5 days of sick leave to petitioner's account.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: May 9, 2007

Date of Mailing: May 9, 2007

² This decision may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6A:4-1.1 *et seq.*